

## **REMARKS**

### **Claim Amendments**

Claim 1-8 and 19 are amended in this Amendment A. Claims 12-18 and 20 are canceled without prejudice to their patentability. Thus, claims 1-11 and 19 will be pending after entry of this amendment. Applicants submit that the amendments do not introduce new matter. In particular, claims 1-7 is amended to more particularly define the generic structure of claim 1 by removing "dicyano C1-C6 alkyl from the list of substituents which may be at R<sup>3</sup> or R<sup>4</sup>. Claim 8 is amended to cancel the last eight listed aminocyanopyridine compounds. Claim 19 is amended to be consistent with claim 1.

Other amendments simply rephrase the claims, remove redundancies or unnecessary terms, or correct grammatical or obvious errors. Applicants submit that such amendments do not affect the scope of the claims, and are permissible under MPEP §2163.07.

Applicants reserve the right to pursue any canceled subject matter and/or any other subject matter disclosed in this application in one or more later-filed divisional and/or continuation applications.

### **Rejection Under 35 U.S.C. § 112**

Claims 8-18 and 20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants request withdrawal of this rejection.

#### *Claim 8*

Claim 8 is rejected because the last eight compounds do not read on claim 1. Further, it is stated that the compounds would be the basis for a restriction under 35 U.S.C. 121 if not canceled. Accordingly, Applicants have amended claim 8 to cancel the last eight compounds and to overcome the rejection. As described above, Applicants expressly reserve the right to pursue the canceled compounds in one or more divisional or continuation applications. Withdrawal of the rejection in view of the amendments to claim 8 is respectfully requested.

*Claims 9-11*

Claims 9-11 are rejected as lacking antecedent basis for the limitation “prodrugs, salts, tautomers and combinations thereof.” Further, the term “prodrug” is objected to as being indefinite. Applicants have overcome the rejection for lack of antecedent basis by amending claim 8 to include the limitation “prodrugs, salts, tautomers and combinations thereof.” As to the term “prodrug,” Applicants submit that the term is not indefinite in its use. For example, one skilled in the art would understand what is meant by the term “prodrug” in this instance. In particular, the term is supported in the specification at paragraph 00046 wherein salts and prodrugs of the aminocyanopyridine compounds are described as contemplated by the present invention. Further, requiring Applicants to specifically name every prodrug of the aminocyanopyridine compounds of the present invention would cause an undue burden. Reconsideration and withdrawal of the rejection with respect to claims 9-11 is respectfully requested.

*Claims 12-18 and 20*

The rejections with respect to claims 12-18 and 20 are mooted by the amendments canceling the claims.

**Rejection Under 35 USC § 102**

Claims 1-11, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by O'Callaghan. Applicants request withdrawal of this rejection. Claim 20 has been canceled thus mooting the rejection. Claims 1-11 and 19 are patentable over the cited reference in view of the amendments described above and the reasons set forth below.

O'Callaghan discusses synthetic reactions of 2-(2-amino-3-cyano-4H-[1]benzopyran-4-yl)propane-1,3-dinitrile with reactive methylene compounds. Compound 3 of the reference is an aminocyanopyridine compound corresponding to the structure of instant claim 1 wherein R<sup>1</sup>, R<sup>2</sup>, R<sup>5</sup>, R<sup>6</sup>, R<sup>7</sup>, R<sup>9</sup> and R<sup>10</sup> are hydrogen, R<sup>8</sup> is hydrogen or methoxy, R<sup>3</sup> or R<sup>4</sup> is dicyano C1 alkyl or dicyano C2 alkyl and G is oxygen. Applicants have amended claims 1-7 and 19 to more particularly define the invention and to distinguish the cited reference. The amended claims more particularly define the generic structure of the aminocyanopyridine compounds to remove

"dicyano C1-C6 alkyl" from the list of substituents at R<sup>3</sup> and R<sup>4</sup>. Accordingly, it is submitted that amended claims 1-7 and 19 define patentably over the cited reference. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

With respect to claims 8-11, each of the compounds listed in claims 8-11 is distinguishable from the cited reference. None of the compounds of claims 8-11 correspond to the compound of O'Callaghan wherein R<sup>1</sup>, R<sup>2</sup>, R<sup>5</sup>, R<sup>6</sup>, R<sup>7</sup>, R<sup>9</sup> and R<sup>10</sup> are hydrogen, R<sup>8</sup> is hydrogen or methoxy, R<sup>3</sup> or R<sup>4</sup> is dicyano C1 alkyl or dicyano C2 alkyl and G is oxygen. Accordingly, claims 8-11 are submitted as patentable over the cited reference. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

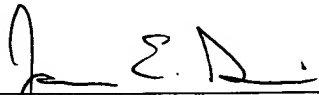
### Conclusion

In view of the foregoing amendments and remarks, Applicants submit that the claims are in condition for allowance.

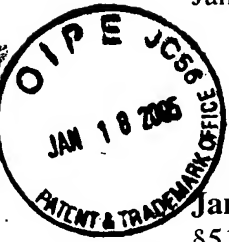
Applicants hereby request a three-month extension to reply to the July 16, 2004 Office action, and have enclosed a check to cover that fee. Applicants do not believe that any other fee(s) is owed in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge such fee(s) to Deposit Account No. **08-0750**. In addition, if there is ever a deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. **08-0750**.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 446-7683.

Respectfully submitted,

  
James E. Davis, Reg. No. 47,516  
Harness, Dickey & Pierce, P.L.C.  
7700 Bonhomme, Suite 400  
St. Louis, Missouri 63105  
(314) 726-7500 (tel)

Amendment A  
10/729,598  
January 18, 2005



**CERTIFICATE OF MAILING UNDER 37 CFR § 1.8**

I certify that this correspondence is being deposited with the U.S. Postal Service on **January 18, 2005** with sufficient postage as first class mail (including Express Mail per MPEP §512), and addressed to **Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

A handwritten signature, appearing to be "J. E. D.", written over a horizontal line.

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